

Service Date: May 5, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application)	UTILITY DIVISION
of Clark Fork Telecommunications')	DOCKET NO. 94.12.63
request to offer Internet service)	(Formerly N-94-120)
Line Subscriptions.)	ORDER NO. 5832a

Final Order

Background

1. On December 5, 1994, Clark Fork Telecommunications (CFT) submitted a request to offer Internet service to its Montana customers on a deregulated basis.

2. On December 22, 1994, the Montana Public Service Commission (Commission) issued a Notice of Commission Action (NCA) and Opportunity For Public Hearing. Interested parties were given until January 23, 1995, to file comments and/or request a hearing.

3. CFT chose not to comment on the regulatory status of its Internet service filing. Citizens Telecommunications Company (CTC) of Montana was the only responding party. CTC's comments state that providers of regulated telecommunications service should be able to offer Internet access as a "new service."

4. On January 5, 1995, CFT filed for authority to offer Internet service on an interim basis, pending a Commission decision on the service's regulatory status.

5. On February 7, 1995, the Commission approved CFT's interim request, and directed its staff to submit discovery to CFT.

Commission Decision

1. Internet access is an innovative and potentially valuable new service offering. Because CFT's initial filing did not provide certain essential information, CFT was informally advised to file an application for interim approval. When the Commission received that application, it was promptly approved.

2. Review of the MTA's purposes makes clear the Commission must both support competition and thereby allow the public access to "rapid advances in telecommunications technology" and ensure that customers who do not wish to use new services are not asked to pay for them. The Commission's approach to this case does both.

3. After explaining the relevance of the Montana Telecommunications Act (MTA), the Commission will explain its final approval of CFT's Internet service as a regulated and tariffed service.

4. The MTA expresses the Montana Legislature's intent and purpose for Commission regulation of telecommunications providers. Its stated goal is to encourage competition while maintaining universal service. In pursuit of this goal, the MTA expressly prohibits the Commission from allowing cross subsidies to flow to deregulated or detariffed services. Section 69-3-806, MCA. The MTA also states that prices charged for a regulated telecommunications service must exceed relevant costs unless otherwise ordered by the Commission. Section 69-3-811(1), MCA. The Commission may require shareholders to absorb any difference.

5. In keeping with that legislative background, the Commission must decide whether CFT's Internet filing is a regulated or deregulated service, and whether Internet should be tariffed. The Commission must also consider the MTA's concern for cost-based pricing.

6. First, the Commission notes that its December 1994 decision declining to approve Internet as a deregulated service was correct. CFT concedes (see Data Response PSC-1) that the service is not a deregulated service.

7. Second, because the service is regulated, the question whether to regulate Internet as a tariffed new service must be addressed. CFT's data responses and CTC's comments support the Commission's decision to treat CFT's Internet filing as a "new service." Although CFT's Internet service was not originally filed as a new service, it fits within the description set forth in '69-3-810, MCA. Although the Commission could approve CFT's Internet service on a detariffed basis, the Commission finds merit in continuing its February approval of CFT's Internet service on a tariffed basis.

8. Finally, the Commission finds it must address the MTA's concern that prices cover relevant costs. This relates to the market for Internet services. CFT asserts its pricing decisions were not so much cost based as they were competitively based. If the Commission chose not to approve CFT's Internet service, CFT's customers could still select any of a half dozen other providers of similar services. Thus, rather than being deprived of Internet type services, CFT's offering adds to the existing alternatives.

9. The Commission will now address the MTA's express concern that service prices exceed their relevant costs. CFT's data responses indicate its Internet service is not currently priced above cost; nor have all relevant costs been considered (see Data Responses PSC 2 and 3). Rather than disapprove of CFT's Internet filing, the Commission finds merit in finally approving the service offering with one condition. CFT shall analyze the cost of providing Internet service and provide the cost results prior to April 18, 1996. It should be noted that the cost information CFT is requested to provide is not burdensome, and is at least in part already being developed for CFT's own use.

10. In summary, the Commission concurs with CFT that Internet is a regulated service. The Commission also finds merit in continuing CFT's request to tariff the service. When complete, CFT must apply its cost study to the provision of Internet service and provide the Commission the results no later than April 18, 1996.

ORDER

NOW THEREFORE, CFT's request to offer Internet service is granted, subject to the condition set forth above. The Commission will continue its review of the regulatory status of the service.

DONE IN OPEN SESSION at Helena, Montana, on this 18th day of April, 1995, by a 4 - 1 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY McCaffree, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner
(Written Dissent Attached)

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

Dissent of Commissioner Oberg

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I respectfully dissent from the majority opinion in part. I support those portions of the decision granting approval of the offering of Internet tariffs to the customers of Clark Forks Communications. I find that tariffing of such services is consistent with the Montana Telecommunications Act, but question whether technology has surpassed the legislative intent of the framers of the appropriate statutes. While only a decade has passed since the act was enacted, technology is light years away from the services contemplated by legislators at the time. At the time no one would have reasonably forecast the availability or demand for interactive services like the Internet.

I disagree with my colleagues on the need for Clark Fork to file cost justification one year from the date of the order. Regulation often calls upon the decision makers to balance varying objectives and goals to arrive at reasonable and common sense public policy. In my opinion, this instance is where a desire for economically correct prices which minimize cross subsidization clashes with an equally important public policy of promoting maximum use of the public switched network and the rapid deployment of new "Information Age" service offerings to the ratepayer.

I think Clark Fork Telecommunications should be applauded for its leadership in bringing Internet services to its customers. As a fledgling Internet surfer I have found that it is often costly and confusing to gain entrance to Cyberspace. Clark Fork has responded to the needs of its customer base in a manner that is progressive.

As a telecommunications policymaker I find that it is important to rule in such a way that promotes and encourages utilities to act in a way consistent with its customers needs. In our handling of Clark Fork's precedent setting breakthrough of a new service offering, we offer the industry, as a whole, signals of what represents desirable utility business conduct.

It has taken the regulator more than several months for the Commission to finally approve the tariff offering. In then placing another burden on Clark Fork to file a cost study in 12 months more uncertainty has been placed on the provider. It may very well discourage similar telephone companies to determine the hassle isn't worth the wait.

While preventing cross subsidies is an admirable regulatory view, I refuse to sacrifice my self on the alter of the economists pyre. One must measure the risk to consumers, the utility, and then balance those concerns with other objectives.

My own view is that the ratepayers do not risk undue exposure due to cross subsidy. Every service offering has start up costs. If the Internet fails to produce reasonable revenues associated costs in a reasonable time period I am confident Clark Fork will act prudently and raise costs or discontinue service to protect its basic customers. On the other hand if the Internet produces substantial revenues that result in excess earnings the Commission has appropriate regulatory tools already available to it to protect the ratepayers.

The Montana Telecommunications Act and present regulation provides sufficient options to result in good regulation. A cost of service study in the context of any future rate case would have been sufficient for this regulator.

I find this consistent with my own philosophy of encouraging rapid deployment of services and minimal oversight when no effect on present rates is requested or contemplated.

RESPECTFULLY SUBMITTED this 18th day of April, 1995

Danny Oberg
Commissioner